

**Staff  
Summary  
Report**



**To: Mayor & City Council  
Through: City Manager**

**Agenda Item Number 1  
Meeting Date: 11/21/01**

**SUBJECT: City of Tempe v. Ciudad del Lago, et al.**

**PREPARED BY:** C. Brad Woodford, City Attorney (350-8229)

**REVIEWED BY:** C. Brad Woodford, City Attorney (350-8229)

**BRIEF:** Authorize the Mayor to enter into a Settlement Agreement to settle the litigation between the City of Tempe and Ciudad del Lago and related entities and authorize a consent to assignment and agreement to negotiate a restated DDA for the Boardwalk Project.

**COMMENTS:** **LITIGATION SETTLEMENTS (0501-04)** Authorize the Mayor to enter into a Settlement Agreement to settle the litigation between the City of Tempe and Ciudad del Lago and related entities and authorize a limited assignment of the rights of development from Ciudad del Lago to Playa del Norte, L.L.C.

**Document Name:** (20011121cacc01) Supporting Documents: Yes

**SUMMARY:** The several parties in the lawsuit entitled City of Tempe v. Ciudad del Lago, et al. have reached a settlement wherein Defendant Playa del Norte will pay to Ciudad del Lago, the sum of \$2,100,000 for the assignment of its rights of development and the lawsuit will be dismissed as to all parties with prejudice. In addition, and as part of the settlement, the City will authorize a limited assignment of Ciudad del Lago's rights to the North Bank (Boardwalk East and West) to Playa del Norte with the proviso that a Restated Development and Disposition Agreement will be negotiated between the City and Playa del Norte within 180 days. If the Restated Development and Disposition Agreement which will apply only to Boardwalk East and West is not successfully negotiated within 180 days, the City of Tempe will reimburse Playa del Norte, the sum of \$2,100,000 paid for those rights of assignment and such rights will terminate.

**RECOMMENDATION:** That the Mayor be authorized to execute the Settlement Agreement and the Consent to Assignment.

**FISCAL NOTE:** None at this time.

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Agreement") is entered into as of this \_\_\_\_ day of November, 2001, by CITY OF TEMPE, ("Tempe") CIUDAD DEL LAGO, L.L.C. ("CDL"), CIUDAD DEL LAGO, INC. ("CDL, INC."), PEABODY HOTEL GROUP, INC. ("PHG"), BELZ TEMPE L.P. ("BT"), BELZ BURROW ("BB"), PH TEMPE, L.P. ("PHT"), FLUOR ENTERPRISES, INC., f/k/a FLUOR DANIEL, INC. ("FEI"), FLUOR DANIEL TEMPE, INC. ("FDTI"), PLAYA DEL NORTE, L.L.C. ("PdN"), BRADLEY D. WILDE and JANET P. WILDE ("the WILDES").

### **RECITALS**

A. On or about September 8, 2000, Tempe filed a Complaint in an action entitled City of Tempe, v. Ciudad Del Lago, L.L.C. et al., Cause No. CV2000-016630 in the Superior Court for the County of Maricopa, State of Arizona, (referred to hereinafter as the "Complaint"). The named defendants in the Complaint include CDL, PHG, and FEI. Defendant CDL removed the action to Federal District Court for the District of Arizona, Cause No. CIV00-1924 PHX SRB, wherein it answered Tempe's Complaint, and filed a Counterclaim against Tempe (the "Counterclaim"), and filed a Third-Party Complaint against PdN and the WILDES. The Complaint, Counterclaim, and Third-Party Complaint allege damages as a result of certain alleged conduct, failures, or inaction (the "Events"). The claims asserted related to the proposed development project which was the subject of the agreements identified in paragraph 3 below ("the Project").

B. Tempe, CDL, PHG, FEI, PdN and the WILDES acknowledge that each party has denied the claims alleged against them in the Complaint, Counterclaim and Third-Party Complaint.

C. Tempe, CDL, PHG, FEI, PdN and the WILDES desire to avoid the expense, inconvenience, risk, delay and distraction of further litigation in CIV00-1924 PHX SRB, or related appellate proceedings and intend to permanently settle and compromise the claims asserted in CIV00-1924 PHX SRB.

D. Pursuant to this Agreement, Tempe is agreeing to settle all claims and causes of action asserted in CIV00-1924 PHX SRB, against CDL, PHG, FEI, and the fictitiously-named defendants. Pursuant to this Agreement, CDL is agreeing to settle all claims and causes of action asserted in CIV00-1924 PHX SRB against Tempe, PdN and the WILDES. Nothing in this section or in the entire Agreement is intended to, nor shall be considered to, or will, extinguish, release, discharge, preclude, and/or limit any right, claim or cause of action of any type that CDL, or PHG, BT, or any Belz-related entity, or FEI, FDTI, or any Fluor related entity, may have against each other.

E. Tempe and CDL acknowledge that each is disappointed that the Project did not come to fruition. In addition, all parties acknowledge that this Agreement is the product of very difficult and complex negotiations and that the Agreement is in the best interests of all parties, allowing the parties to resolve the litigation and allowing each of the parties to pursue more productive endeavors.

## **AGREEMENT**

NOW, THEREFORE, it is hereby agreed as follows:

1. Tempe agrees to cause to be paid to CDL the total sum of Two Million One Hundred Thousand Dollars (\$2,100,000). Without limiting the foregoing, the parties acknowledge that simultaneously with this Agreement, CDL and PdN have entered into an Assignment of Development and Disposition Agreement (the "Assignment") in the form attached as Exhibit A, pursuant to which CDL will receive \$2.1 million from PdN. Payment of the \$2.1 million pursuant to the Assignment satisfies Tempe's obligations under this Paragraph. The Assignment is incorporated by this reference. Tempe and PdN have also entered into an Agreement and Acknowledgment of Assignment (the "Agreement and Acknowledgment") in the form attached as Exhibit B, which is also incorporated by this reference.

2. The payment provided in Paragraph 1 shall be made to CDL within fourteen (14) calendar days of execution and delivery of this Agreement, the Assignment, and the Agreement and Acknowledgment, by PdN providing a certified or cashier's check to the offices of Snell & Wilmer, L.L.P. The check shall be made payable to Ciudad del Lago, L.L.C., to the reference of this Agreement. The check will be deposited by Snell & Wilmer with Bank One Trust Company, National Association, as escrow agent. The escrow agent will establish and maintain an escrow account and will invest and reinvest funds in the escrow account in AAA rated money market accounts or other investment accounts as jointly directed in writing by FEI and BT. No sum may be withdrawn from such escrow account except as provided by the escrow instructions. Delivery of the funds to Snell & Wilmer by PdN constitutes the full satisfaction of Tempe's obligations under this agreement.

3. Tempe, CDL and PdN agree that the Development and Disposition Agreement, entered as of March 7, 1996, City of Tempe Contract No. 96-53, and all amendments and supplements thereto as well as the Memorandum of Understanding dated June 12, 1997, City of Tempe Contract No. 97-91 (collectively referred to hereafter as the “DDA”) is assigned to PdN pursuant to the Assignment in the form of Exhibit A hereto, which Assignment shall be effective simultaneously with the effectiveness of this Agreement. Upon execution and delivery of the Assignment CDL also agrees to execute and deliver to PdN and Tempe quit claim deeds for the property identified in the DDA.

4. Tempe agrees to reasonably cooperate with CDL, PHG, Belz Tempe, L.P., FDTI, and FEI and to make available for deposition in Tempe, Arizona, at mutually convenient times City of Tempe employees, elected officials, and/or Federal Rule of Civil Procedure 30(b)(6) witnesses, in any mediation, arbitration and/or litigation venued in the United States between CDL, and PHG, BT, or any Belz-related business, and FEI, FDTI, or any Fluor related entity.

5. In consideration of the assignment of the DDA, the execution of quit claim deeds for the DDA property, the dismissal of the Counterclaim and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Tempe agrees to a dismissal with prejudice of the aforementioned Complaint against all named and fictitiously-named defendants. For such consideration, Tempe, for itself, its citizens, elected officials, employees, representatives, beneficiaries, and assigns hereby totally and completely releases and forever discharges CDL, CDL, INC., BB, BT, PHG, PHT, FEI, FDTI, PdN and the WILDES and all fictitiously-named defendants, and their respective past, present, and future members, owners, shareholders, investors, founders, principals, officers, directors, attorneys, insurers,

administrators, agents, servants, representatives, employees, affiliates, subsidiaries, parent corporations, related business entities, partners, predecessors and successors in interest, and assigns (referred to hereafter as the “CDL Released Parties”) from any and all past, present, or future claims, demands, obligations, actions, causes of action, claims for breach of contract, indemnity or reimbursement, rights, attorneys’ fees, costs, expenses, damages, and compensation of any nature whatsoever, which Tempe now has or which may hereafter accrue or otherwise be acquired on account of, or in any way growing out of, all known, unknown, foreseen, and unforeseen damages and the consequences thereof resulting or to result, or in any way connected with the Events, or in any way growing out of the Events, Complaint, Counterclaim, the DDA , or the subject matter thereof.

6. In consideration for payment of the agreed-upon sum to CDL, dismissal of the Complaint and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Counterclaim Plaintiff and Third Party Plaintiff CDL agrees to a dismissal with prejudice of its Counterclaim against Tempe and its Third-Party Complaint against PdN and the WILDES, and hereby waives and relinquishes any right to appeal from the dismissal by the court of the Third Party complaint. For such consideration, CDL, CDL, INC., PHG, BT, PHT, BB, FEI, and FDTI for themselves, their members, personal representatives, beneficiaries, affiliates, related businesses and related corporations, and assigns hereby totally release and forever discharge Tempe, PdN, and the WILDES and their respective past, present, and future officers, attorneys, insurers, administrators, agents, servants, representatives, employees, elected officers, staff, departments, predecessors and successors in interest, and assigns (referred to hereafter as the “Tempe Released Parties”) from any and all past, present, or future claims, demands, obligations, actions, causes of action, claims for breach of contract or indemnity, damages,

rights, costs, expenses and compensation of any nature which the CDL Released Parties now have against Tempe, PdN and/or the WILDES or which may hereafter accrue or otherwise be acquired on account of, or in any way growing out of, and all known, unknown, foreseen, and unforeseen damages and the consequences thereof resulting or to result or in any way connected with the Events or in any way growing out of the Events, the Counterclaim, the Third-Party Complaint, the DDA, or the subject matter thereof. Nothing in this section or in the entire Agreement is intended to, nor shall be considered to, or will, extinguish, release, discharge, preclude, and/or limit any right, claim or cause of action of any type that CDL, or PHG, BT, or any Belz-related entity, or FEI, FDTI, or any Fluor related entity, may have against each other.

7. In consideration of the assignment of the DDA, the execution of quit claim deeds for the DDA property, the dismissal with prejudice of the Third-Party Complaint, and CDL's waiver and relinquishment of CDL's right to appeal therefrom, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, PdN and the WILDES agree to a dismissal with prejudice of the aforementioned Third-Party Complaint with the parties to bear their own attorney's fees and costs. For such consideration, PdN and the WILDES for themselves and their members, employees, representatives, beneficiaries, affiliates, and assigns hereby totally and completely release and forever discharge the CDL Released Parties, Tempe and the Tempe Released Parties from any and all past, present, or future claims, demands, obligations, actions, causes of action, claims for breach of contract, indemnity or reimbursement, rights, attorneys' fees, costs, expenses, damages, and compensation of any nature whatsoever, which PdN and the WILDES now have or which may hereafter accrue or otherwise be acquired on account of, or in any way growing out of, all known, unknown, foreseen, and unforeseen damages and the consequences thereof resulting or to result, or in any way connected with the

Events, or in any way growing out of the Events, Complaint, Counterclaim, the Third-Party Complaint, the DDA , or the subject matter thereof.

8. Tempe hereby acknowledges and agrees that the release and discharge set forth in this Agreement is a general release and discharge as to only the named defendants, PdN and the WILDES, fictitiously-named defendants and the CDL Released Parties. Tempe expressly waives and assumes the risk of any and all claims for damages which exist as of this date arising from or out of or in any way related to the Events, the Complaint, the Counterclaim, the DDA, or the subject matter thereof, but of which Tempe does not know or which it does not suspect exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Tempe's decision to enter into this Agreement. Tempe further agrees that it does and will accept the terms and conditions of this Agreement as a complete compromise of matters involving disputed issues of law and fact and assumes the risk that the facts or law may be otherwise than it may believe.

9. The CDL Released Parties hereby acknowledge and agree that the release and discharge set forth in this Agreement is a general release and discharge as to only Tempe and the Tempe Released Parties, and that Tempe has entered into this Agreement in order to obtain its peace. The CDL Released Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date against Tempe and/or the Tempe Released Parties arising from or out of or in any way related to the Events, the Complaint, the Counterclaim, the Third-Party Complaint and the DDA or the subject matter thereof, including any claim of which the CDL Released Parties do not know or which they do not suspect exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the CDL Released Parties' decision to enter into this Agreement. The CDL Released

Parties further agree that they do and will accept the terms and conditions of this Agreement as a complete compromise of matters against Tempe and the Tempe Released Parties involving disputed issues of law and fact and assume the risk that the facts or law may be otherwise than they may believe. Nothing in this section or in the entire Agreement is intended to, nor shall be considered to, or will, extinguish, release, discharge, preclude, and/or limit any right, claim, or cause of action of any type that CDL, or PHG, BT, or any Belz-related entity, or FEI, FDTI, or any Fluor related entity, may have against each other.

10. PdN and the WILDES hereby acknowledge and agree that the release and discharge set forth in this Agreement is a general release and discharge as to the CDL Released Parties, Tempe and the Tempe Released Parties PdN and the WILDES expressly waive and assume the risk of any and all claims for damages which exist as of this date arising from or out of or in any way related to the Events, the Complaint, the Counterclaim, the Third-Party Complaint, the DDA, or the subject matter thereof, but of which PdN and the WILDES do not know or which they do not suspect exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect PdN and the WILDES's decision to enter into this Agreement. PdN and the WILDES further agree that they do and will accept the terms and conditions of this Agreement as a complete compromise of matters involving disputed issues of law and fact and assume the risk that the facts or law may be otherwise than they may believe.

11. The execution of this instrument by Tempe covers all claims for damages and releases all claims, demands, and causes of action which were alleged or could have been alleged against the named and fictitiously-named defendants arising from, or out of, or in any way related to the Events, the Complaint, the DDA, or the subject matter thereof. The execution of

this instrument by the CDL Released Parties covers all claims for damages and releases all claims, demands, and causes of action which were alleged or could have been alleged against Tempe and/or the Tempe Released Parties arising from, or out of, or in any way related to the Events, Complaint, Counterclaim, the Third-Party Complaint, the DDA, or the subject matter thereof, except that nothing in this section or in the entire Agreement is intended to, nor shall be considered to, or will, extinguish, release, discharge, preclude, and/or limit any right, claim, or cause of action that CDL, or PHG, BT, or any Belz-related entity, or FEI, FDTI, or any Fluor related entity, may have against each other.

12. In consideration for the aforementioned, the attorneys for Tempe, CDL, PHG, FEI, PdN and the WILDES, agree to execute a stipulation in the form attached as Exhibit C, and to present to the United States District Court for the District of Arizona an order dismissing with prejudice CIV00-1924 PHX SRB.

13. Tempe, CDL, PHG, FEI, PdN and the WILDES agree that each party shall bear its own costs, attorneys' fees, and other expenses in CIV00-1924 PHX SRB.

14. This Agreement is the result of an arms-length, good-faith compromise of disputed claims and shall never at any time, for any purpose, be considered as an admission of liability, breach of contract, or responsibility of any party hereto, who deny and continue to deny such liability and to disclaim such responsibility.

15. This Agreement is intended to, and the parties warrant that it will, forever dispose of all liability, known and unknown, present and future, of the named defendants and the fictitiously-named defendants to Tempe, of the Counterclaim Defendant Tempe to Counterclaimant/Plaintiff CDL, and of the Third-Party Defendants PdN and the WILDES to CDL or Tempe. Nothing in this section or in the entire Agreement is intended to, nor shall be

considered to or will, extinguish, release, discharge, preclude, and/or limit any right, claim, or cause of action that CDL, or PHG, BT or any Belz-related entity, or FEI, FDTI, or any Fluor related entity, may have against each other.

16. Tempe represents and avers that its Mayor has the full and express authority and consent of Tempe's elected Council, via resolution or otherwise, to enter into and execute this Agreement. The individuals executing this Agreement on behalf of the CDL Released Parties represent and warrant that they have full authority to do so.

17. This Agreement, the concurrently executed Assignment, and the concurrently executed Agreement and Acknowledgement contain the entire agreement among the parties and shall be binding upon and inure to the benefit of the parties thereto and the successors and assigns of each. This document may only be amended or modified by a written document executed by all of the parties.

18. It is further understood that the terms of this Agreement are contractual and not merely recitals. Furthermore, this Agreement is to be construed and interpreted in accordance with the substantive laws of the State of Arizona, without reference to conflict of law principles.

19. If any provision of this Agreement or the application thereof is held invalid, any such invalidity shall not affect other provisions or applications of this Agreement.

20. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

21. The effectiveness of this Agreement is contingent upon the simultaneous execution, delivery of the Assignment and the Agreement and Acknowledgment, and the delivery of the payment provided for in paragraph 1.

22. Should any of the parties herein institute legal proceedings for the enforcement of this Agreement, the Assignment or the Agreement and Acknowledgement, or for any damages related to another party's conduct in connection with the negotiation and execution of this Agreement, the Assignment or the Agreement and Acknowledgment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs to be determined by a court sitting without a jury. The parties expressly agree that litigation of any such claims shall take place in the United States District Court for the District of Arizona and consent to the continued exercise of jurisdiction by that court for the purpose of enforcement of this Agreement. If for any reason it should be finally determined by the U.S. District Court for the District of Arizona that it lacks jurisdiction, then the parties agree alternatively that litigation may take place in the Maricopa County Superior Court.

23. Martin S. Belz represents and warrants that Belz Enterprises is not, and never has been, an existing legal entity and that there is no entity known as Belz Enterprises that claims any rights relating to the Project.

IN WITNESS WHEREOF, we have hereunder set our hands and seals this \_\_\_\_ day of November, 2001.

**CITY OF TEMPE, ARIZONA,  
an Arizona municipal corporation**

By: \_\_\_\_\_

Neil G. Giuliano

Its: Mayor and signing with the consent,  
authority, and ratification of this Agreement  
by the Tempe City Council

ATTEST:

\_\_\_\_\_  
Tempe City Clerk

Approved as to form:

\_\_\_\_\_  
Brad Woodford, Tempe City Attorney

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF MARICOPA   )

On the \_\_\_\_ day of November, 2001, before me, the undersigned Notary Public, personally appeared Neil G. Giuliano, Mayor of the City of Tempe, known to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires:

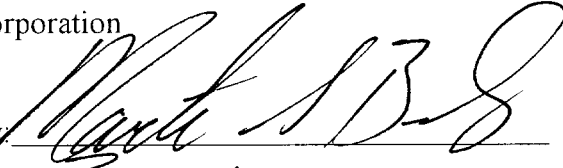
\_\_\_\_\_

**CIUDAD DEL LAGO, L.L.C.**, a Delaware  
Limited Liability Company

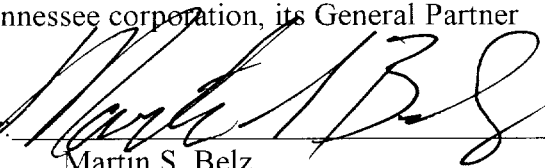
By: \_\_\_\_\_

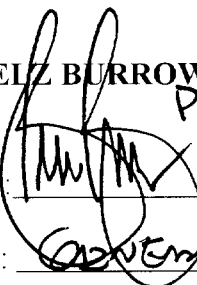
Its: \_\_\_\_\_

**CIUDAD DEL LAGO, INC.**, a Delaware Corporation

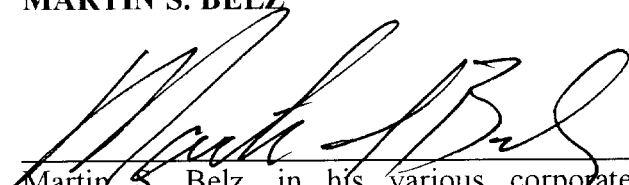
By:   
Its: President

**BELZ TEMPE, L.P.**, a Tennessee Limited Partnership, a member of CDL, by **REI, Inc.**, a Tennessee corporation, its General Partner

By:   
Martin S. Belz  
Its: President

**BELZ BURROW**, a Tennessee Limited Partnership  
By:   
Its: General Partner

**MARTIN S. BELZ**

  
Martin S. Belz, in his various corporate and organizational capacities for CDL, BT and PHG hereby confirms and attests to the representations made in paragraph 23.

COUNTY OF SHELBY )

On the 5<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Martin S. Belz, the C.O.O. of Ciudad del Lago, L.L.C., the PRESIDENT of Ciudad del Lago, Inc., the PRESIDENT of Belz Tempe, L.P., and the \_\_\_\_\_ of Belz Burrow, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

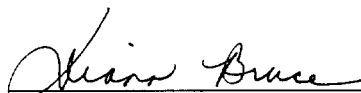
My Commission expires:

**MY COMMISSION EXPIRES:**  
January 20, 2004

STATE OF ARKANSAS       )  
  ) ss  
COUNTY OF CRAIGHEAD )

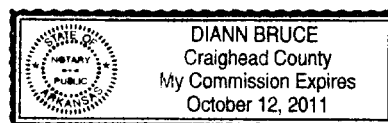
On the 7<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Bruce Burrow, the General Partner of Belz•Burrow, a Tennessee Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge that he executed the same for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission expires:

10-12-11



By **FLUOR DANIEL TEMPE, INC.**, a  
California corporation, a member of CDL,

By: Lawrence H. Fisher

Name: LN Fisher

STATE OF CALIFORNIA )  
COUNTY OF Orange )ss.

On the 15<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Lawrence H. Fisher, the Secretary of Fluor Daniel Tempe, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Carol K. Walker  
Notary Public

My Commission expires:

5/24/02

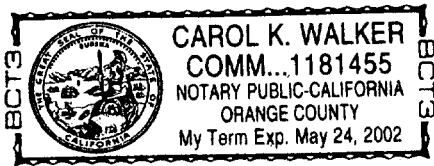
FLUOR ENTERPRISES, INC., a California corporation,

By: Lawrence H. Fisher  
Its: Vice President

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF ORANGE )

On the 15<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Lawrence H. Fisher, the VP & Secretary of Fluor Enterprises, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

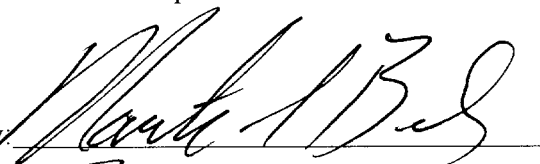


Carol K. Walker  
Notary Public

My Commission expires:

5/24/02

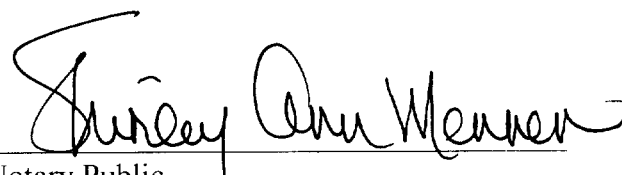
**PEABODY HOTEL GROUP, INC.,**  
a Tennessee corporation

By:   
Its: President

STATE OF TENNESSEE    )  
                                  )ss.  
COUNTY OF SHELBY    )

On the 5<sup>TH</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared MARTIN S. BELZ the PRESIDENT of Peabody Hotel Group, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

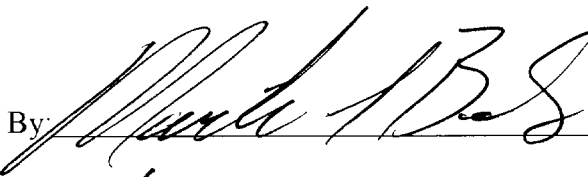
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission expires:

**MY COMMISSION EXPIRES:**  
**January 20, 2004**

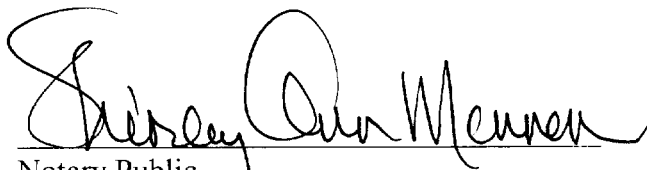
PH TEMPE, L.P.,

By:   
Its: l.p.

STATE OF TENNESSEE )  
 )ss.  
COUNTY OF SHELBY )

On the 5th day of November, 2001, before me, the undersigned Notary Public, personally appeared MARTIN S. BELZ, the PRESIDENT, of PH Tempe, L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission expires:

MY COMMISSION EXPIRES  
January 20, 2004

By: MD  
Its: MANAGER

 **OFFICIAL SEAL**  
**JENNIFER L. FOOTE**  
**Notary Public - State of Arizona**  
**MARICOPA COUNTY**  
**My Commission Expires April 25, 2006**

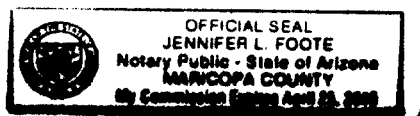
Notary Public Jennifer M. [Signature]

*Bradley D. Wilde*  
BRADLEY D. WILDE

STATE OF ARIZONA       )  
                                  )ss.  
COUNTY OF MARICOPA   )

On the 14<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Bradley D. Wilde, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



*Jennifer L. Foote*  
Notary Public

My Commission expires:

April 25<sup>th</sup>, 2005

*Janet P. Wilde*  
JANET P. WILDE

STATE OF ARIZONA       )  
                                  )ss.  
COUNTY OF MARICOPA   )

On the 14<sup>th</sup> day of November, 2001, before me, the undersigned Notary Public, personally appeared Janet P. Wilde, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purpose contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



*Jennifer L. Foote*  
Notary Public

My Commission expires:

April 25<sup>th</sup>, 2005

**WHEN RECORDED, RETURN TO:**

Grady Gammage, Esq.  
GAMMAGE & BURNHAM, P.L.C.  
Two N. Central 18<sup>th</sup> Fl.  
Phoenix, AZ 85004

**ASSIGNMENT OF DEVELOPMENT AND DISPOSITION AGREEMENT**

C96-53C

THIS ASSIGNMENT OF DEVELOPMENT AND DISPOSITION AGREEMENT ("Assignment") is made as of the \_\_\_\_\_ day of November, 2001, by and between CIUDAD DEL LAGO, L.L.C., a Delaware limited liability company (hereinafter referred to as "CDL") and PLAYA DEL NORTE, L.L.C., an Arizona limited liability company ("PdN").

**RECITALS:**

A. The City of Tempe and CDL entered into that certain Development and Disposition Agreement No. C96-53 dated as of March 7, 1996 and recorded as Instrument No. 96-0484627, Official Records of Maricopa County, Arizona, as amended by a certain Supplement to Development and Disposition Agreement No. C96-53A dated as of July 30, 1998 and recorded as Instrument No. 98-0704928, and as amended by an Addendum to Supplement to Development and Disposition Agreement No. C96-53B dated as of July 30, 1998 and recorded as Instrument No. 98-0728221 (together the "DDA").

B. CDL desires to assign all of its right, title and interest in the DDA, as the same may have been further amended by the City of Tempe and CDL, to PdN.

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Upon the payment provided for in paragraph 2, all rights of CDL in, arising from, or relating to the DDA and any amendments thereto are granted, assigned, transferred and conveyed to PdN.

2. PdN shall pay the sum of Two Million One Hundred Thousand Dollars (\$2,100,000) as consideration for the Assignment upon execution and delivery of the Assignment, in such a manner, at such time and to such parties as provided in the Settlement Agreement and Release of even date herewith.

**Exhibit A**

3. CDL warrants that it has made no transfer, conveyance, assignment, hypothecation or pledge of any rights under the DDA, either prior to or since the execution of that agreement.

4. The undersigned warrant one to the other that they are duly authorized and have full power to enter into this Assignment on behalf of the parties hereto

5. That all provisions of the DDA and any amendments thereto shall remain in full force and effect.

CIUDAD DEL LAGO, a Delaware limited liability company

By: [Signature]  
Its: C.D.O.

STATE OF ~~MISSISSIPPI~~ TENNESSEE )  
County of ~~MAZUMBA~~ SHELBY ) ss.

On this 5TH day of November, 2001, before me, the undersigned officer, personally appeared MARTIN S. BELZ, who acknowledged himself to be the Authorized Member of Ciudad Del Lago, L.L.C., a Delaware limited liability company, whom I know personally/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

[Signature]  
Notary Public

My commission expires:

MY COMMISSION EXPIRES  
January 20, 2004

PLAYA DEL NORTE, L.L.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

On this 14<sup>th</sup> day of November, 2001, before me, the undersigned officer, personally appeared Brad Wilde, who acknowledged himself to be the Authorized Member of Playa Del Norte, L.L.C., an Arizona limited liability company, whom I know personally/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

My commission expires:

April 25<sup>th</sup>, 2005



## **AGREEMENT AND ACKNOWLEDGEMENT OF ASSIGNMENT**

(Rio Salado Boardwalk Development Project)

THIS AGREEMENT ("Agreement") is made and entered into the date below stated by and between THE CITY OF TEMPE, an Arizona municipal corporation (hereinafter called the "City"), and Playa Del Norte, L.L.C., an Arizona limited liability company (hereinafter called "PdN").

### **RECITALS**

- A. WHEREAS PdN has obtained a full assignment of the rights of the original developer (CIUDAD DEL LAGO, L.L.C., "CDL"), in that certain Development and Disposition Agreement #C96-53 as amended and supplemented ("DDA").
- B. WHEREAS, in consideration for that assignment, PdN has agreed to tender \$2.1 million to CDL in order to settle litigation and obtain a release of PdN and of the City of Tempe.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, the parties agree as set forth below:

- 1. City consents to the assignment of the rights of CDL in the DDA to PdN, and acknowledges PdN's rights as assignee for the period of time and under the conditions stated herein.
- 2. PdN is hereby awarded the exclusive right to negotiate an amendment and restatement of the DDA ("Restated DDA") for that portion of property known as Rio Salado Boardwalk Development Project ("Project") lying north of the Salt River and adjacent to the east and west sides of Rural Road in Tempe, Arizona.
- 3. The period of negotiations for the Restated DDA shall not extend beyond one hundred eighty (180) days from the date of this Agreement, but in no event later than June 20, 2002 (the "Negotiation Period").
- 4. PdN shall have the right to conduct environmental and soil testing on City-owned property within the Project during the Negotiation Period, as well as conducting any other development feasibility analysis which PdN in its discretion deems appropriate.
- 5. PdN shall provide to City, financial statements which evidence PdN's ability to develop within the Project necessary roadway and traffic circulation improvements to allow full development of the Project and purchase of the City property.

6. If for any reason City and PdN cannot agree to the terms of a Restated DDA Development and Disposition Agreement-for the Project within the Negotiation Period, this Agreement shall terminate and all rights of PdN arising from the assigned DDA shall be extinguished.

7. In the event of termination of this Agreement as set forth in Paragraph 6 above, City shall reimburse PdN the sum of \$2,100,000 (the monies paid by PdN to obtain the assignment of rights under the DDA and the release of claims against PdN and the City). Reimbursement shall be made administratively by the City Treasurer immediately upon the expiration of 180 days after the date of execution of this Agreement or within five (5) business days following receipt of demand for payment from PdN delivered to the City Clerk, copy to the City Attorney whichever shall be later. Upon such reimbursement, PdN shall immediately provide to the City copies of all environmental, soils and engineering reports prepared under Paragraph 4 above.

8. This Agreement, read in conjunction with the DDA, Assignment of Development and Disposition Agreement even date, and the Settlement Agreement and Release of even date sets forth all rights of PdN in the DDA, notwithstanding any other oral or written representations to the contrary.

9. Notwithstanding anything to the contrary in the Assignment of Development and Disposition Agreement of even date, City will take no action to declare a default or to pursue any remedy for any existing default during the Negotiation Period.

10. In no event shall PdN or the City have any obligation to perform under the existing DDA or be liable for any damages or other remedies available to the City in the event of default. It is the understanding and intent of the parties that the Negotiation Period be utilized to negotiate and to prepare a Restated DDA to the satisfaction of City and PdN. If no such agreement is concluded, City's and PdN's only remedy is termination of this Agreement, in which case, PdN shall be entitled to, and City shall timely make, the payment described in Paragraph 7 above.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

ATTEST:

**"CITY"**

THE CITY OF TEMPE, an Arizona  
municipal corporation

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Neil Giuliano, Mayor

\_\_\_\_\_  
City Attorney

PLAYA DEL NORTE, a limited liability  
corporation

By \_\_\_\_\_  
Name Bradley D. Wilde  
Title manager